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SUPREME COURT OF THE UNITED STATES

October Term 1980

STANLEY A. LA FARGUE ..... Petitioner

versus

JOHN O. ST. AMANT, SHERIFF OF
ST. CHARLES PARISH, LOUISIANA, AND
ST. CHARLES HERALD ..... Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

IN PROPER PERSON

STANLEY A. LA FARGUE
3127 Government Street
Post Office Box 66401
Baton Rouge, Louisiana 70896

May_____, 1981

QUESTION PRESENTED

Whether or not the District Court Judge abused his discretion in granting defendants' motions for summary judgment in that an issue of fact was clearly presented by plaintiff, and in ruling that it lacked jurisdiction over the subject matter.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, STANLEY A. LA FARGUE, respectfully prays that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Fifth Circuit, entered February 20, 1981, affirming the District Court's granting of defendants' motions for summary judgment, in a suit brought under Article XIV of the United States Constitution, and 28 U.S.C. 1343.

OPINIONS BELOW

The Opinion of the United States Supreme Court of Appeals for the Fifth Circuit was entered on February 20, 1981, with the stamp "Do Not Publish" affixed thereon. (See Appendix, pp. 0.) The Opinion of the United States District Court, Eastern District of Louisiana, was entered June 5, 1980.

JURISDICTION

The Order of the United States Court of Appeals, Fifth Circuit, was entered on February 20, 1981. This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1343, and Art. XIV of the U.S. Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. 1343 states:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
"(1) To recover damages for injury to his person or property or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
"(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Article XIV of the United States Constitution states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiciton the equal protection of the laws."

STATEMENT OF THE CASE

Plantiff was a judgment creditor of one Glenn L. Babin, a resident and property owner of St. Charles Parish, Louisiana. As assignee, he sought to recover amount expended relative to a judgment of the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana.

A writ of fieri facias had issued from the said Nineteenth Judicial District Court, in May, 1979, directed to the defendant, John O. St. Amant, ordering the seizure and sale of immovable property of the said Babin. This writ was personally delivered to defendant by plaintiff, the facts made known to defendant, and he assured plaintiff that the matter would be handled expeditiously. However, the defendant neglected his duties in the matter. Errors and delays occurred. No effective relief was ever provided, and the needless delays and dereliction of duty caused further damages to plaintiff than had already been sustained.

As a citizen of the United States and Louisiana, plaintiff had every right to expect that the elected official of the State would discharge his responsibility to the public and carry out statutory duties imposed. By St. Amant's not doing so, plaintiff contends that his rights were abridged; that he stated a claim for which the District Court had jurisdiction.

Plaintiff now petitions the Supreme Court of the United States to grant a Writ of Certiorari for the purpose of reviewing the Order of the United States Court of Appeals, Fifth Circuit.

REASON FOR GRANTING THE WRIT

1. It Is An Abuse Of Discretion For The District Court to Grant Motions For Summary Judgment, In That An Issue of Fact Was Clearly Presented by Plaintiff, And That it Lacked Jurisdiction Over The Subject Matter.

Plaintiff relied on the laws of Louisiana, which gave him the right to pursue relief through the writ of fieri facias, particularly the following:

Art. 2291, La. Code of Civil Procedure states:

> "A judgment for the payment of money may be executed by a writ of fieri facias directing the seizure and sale of property of the judgment debtor."

Art. 2253, La. Code of Civil Procedure states:

> "At the request of a judgment creditor, the clerk shall issue a writ bearing his signature, the seal of the court, and the date, and directing the sheriff of the parish where the judgment is to be executed to enforce it in the manner set forth in the writ. Concurrent writs may be directed to sheriffs of several parishes."

Plaintiff had a right to expect that the writ would be enforced, in accordance with its tenor. Plaintiff was the victim of the lack of concern, negligence and dereliction of duty of the defendant, and could only feel, because of previous threats made by the said Babin, that some conspiracy or collusion existed against him in St. Charles Parish.

Any act of commission or omission contrary to legal or equitable duty which operates to the injury of another can be classified as constructive fraud. Most assuredly the defendant, St. Amant, omitted his legal and equitable duty, by not following prescribed duties as the Sheriff and Civil Process Server of his Parish. His negligence was shown by his admissions in correspondence to plaintiff and plaintiff sought to recover damages he had sustained.

Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights is an actionable matter as is the breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another (*Fidelity & Casualty Co.* v. *Cutts*, 95 Me. 162, 49 Atl. 673).

Plaintiff itemized his damages in excess of $50,000 at the time his action was filed, but which continue to the present date, succinctly stating a claim and a genuine issue of material fact.

When there is a genuine issue of fact, defendants are not entitled to summary judgment, and plaintiff quotes from the following:

> *Ray* v. *Associated Indem. Corp.*, 373 So.2d 166:
> "Burden of showing that there is not a genuine issue of material fact in dispute is upon mover for summary judgment, and any doubt is resolved against granting motion in favor of trial on merits."
>
> *LeBlanc* v. *Landry*, 371 So.2d 1276:
> "Summary judgment procedure should be used cautiously and sparingly and any reasonable doubt concerning existence of such should be resolved against mover and in favor of full trial on the merits."
>
> *Wells* v. *Security Insurance Co. of Hartford*, 371 So.2d 354:
> "On motion for summary judgment movant has a heavy burden to demonstrate the absence of a factual dispute on any relevant issue; any doubt should be resolved in favor of party opposing the motion."
>
> *Aristocrat Air Conditioning and Refrigeration, Inc.* v. *Affiliated Group Enterprises Corp.*, 365 So.2d 286, *Employers' Surplus Line Ins. Co.* v. *City of Baton Rouge*, 362 So.2d 561:
> "Any doubt as to existence of material issues of fact must be resolved against granting of summary judgment and in favor of trial on the merits to resolve disputed facts."

Justiciable controversy was shown, and when such is the case, motions for summary judgment must be denied and the issues resolved by trial on the merits.

Plaintiff filed opposition to defendants' motions for summary judgment; however, no affidavit was attached. Neither was an affidavit filed by defendant, St. Amant, until it was presented on the day of the hearing, at which time plaintiff objected. The Court exercised its discretion and permitted the affidavit's filing, then commented on the lack of such by plaintiff. However, if an affidavit was necessary, plaintiff was present and could have prepared same, at that time, or could have testified, under oath, to all pertinent facts. Is not an affidavit the sworn testimony of the affiant, in writing?

> "Failure of an adverse party to file counteraffidavits does not automatically entitle one to a summary judgment"
>
> "Affidavits and other documents are not substitutes for findings of fact by a court; this type of evidence must be scrutinized carefully when passing on the question of the granting of a summary judgment."
>
> *Jewell* v. *Thompson,* App. 1980, 386 So.2d 689
>
> "Summary judgment may not be granted on the basis that the affidavits on one side preponderate over the opposing affidavits."
>
> *Jones* v. *Davis,* App. 1970, 233 So.2d 310, writ refused 256 La. 80, 235 So.2d 101

Rules outlining procedure for moving for summary judgment do not make mandatory the filing of countervailing affidavits by the party opposing the motion, and a trial on the merits would have resolved any disputed facts.

The defendant, St. Amant, was statutorily bound to carry out certain duties and functions of his office, which he did not do. Plaintiff sustained damages thereby. Plaintiff claims no special privileges under the Constitution, giving him the right to purchase the property against which the judgment

was lodged. But had the State through their elected official carried out statutory duties, plaintiff would have had an opportunity to bid on the property or be reimbursed for his interest in same by the successful bidder. Relying on the equal protection of all laws, both State and Federal, the negligence of the defendant subverted the relief that was available to plaintiff.

The judgment of the District Court fails to take into consideration that 28 U.S.C. 1343 reinforces and relates to the Constitutional Amendment, as follows:

> "Under this section ... one deprived under color of state law ... may obtain redress in the federal courts."
>
> *Hatfield* v. *Bailleaux,* C.A.Or. 1961, 290 F.2d 632
>
> "A district court has power to grant injunctive relief where there has been a deprivation of civil rights."
>
> *Sewell* v. *Pegelow,* C.A. Va. 1961, 291 F.2d 196.

CONCLUSION

Plaintiff believes that it was an abuse of the discretion of the District Court to hold that it had no jurisdiction over the issues and to grant defendants' motions for summary judgment. Plaintiff sustained damages by neglect and dereliction of duty of defendants, for which he is entitled to recover.

Respectfully submitted,

IN PROPER PERSON

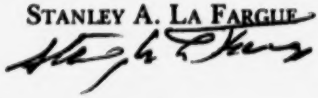


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CERTIFICATE

I do hereby certify that copies of the above and foregoing brief have been mailed, postage prepaid, to Mr. Steven F. Griffith, P.O. Drawer G, Destrehan, Louisiana 70047, and to Mr. Emile St. Pierre, Destrehan, Louisiana 70057, this 18 day of May, 1981.

STANLEY A. LA FARGUE



APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

DO NOT PUBLISH

No. 80-3421
Summary Calendar

STANLEY A. LA FARGUE ..... *Plaintiff-Appellant*

v.

JOHN O. ST. AMANT, ET AL., ... *Defendants-Appellees.*

Appeal from the United States District Court
for the Eastern District of Louisiana

(FEBRUARY 20, 1981)

Before AINSWORTH, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM:

Affirmed on the basis of District Judge Fred J. Cassibry's opinion of June 5, 1980, adopting the Report and Recommendation of Magistrate Marcel Livaudais, Jr., with amendment.

AFFIRMED.